

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

BRIAN D. FARABEE,

Petitioner,

v.

Civil Action No. 2:22cv279

SHERIFF OF DINWIDDIE COUNTY, *et al.*,

Respondents.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241, ECF No. 1, and the Respondent's Motion to Dismiss. ECF No. 19. In his Petition, Petitioner alleges violations of his federal rights pertaining to his confinement at Central State Hospital and Eastern State Hospital.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(A) and (B) and Eastern District of Virginia Local Civil Rule 72. The Magistrate Judge's Report and Recommendation filed July 6, 2023, recommends that the Respondent's Motion to Dismiss, ECF No. 19, be granted in part and denied in part. ECF No. 27. On August 21, 2023, after receiving an extension, Petitioner timely mailed his objections to the Report and Recommendation.¹ ECF No. 31. Respondent did not respond to Petitioner's objections and the time to do so has expired.

¹ On September 11, 2023, Petitioner filed a motion for an extension of time to file his objections to the Magistrate Judge's Report and Recommendation. ECF No. 34. Therein, Petitioner states he believes his objections, mailed on August 21, 2023, were not filed. However, the Court received and filed his objections on August 28, 2023, and deemed the objections timely. Accordingly, Petitioner's motion for an extension of time, ECF No. 34, is **DISMISSED** as **MOOT**.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to,² does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed July 6, 2023. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 19, be **GRANTED IN PART** and **DENIED IN PART**. Claims One and Two are **DISMISSED WITH PREJUDICE** and Claim Four is **DISMISSED WITHOUT PREJUDICE**. Claim Three is **STAYED** pending the outcome of Petitioner's civil rights claim, *Farabee v. Clarke*, 2:22cv343 (E.D. Va.). Further, Petitioner's Motion for a Default Judgment, ECF No. 14, is **DENIED**.

Finding that the procedural basis for dismissal of Petitioner's § 2254 Petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a

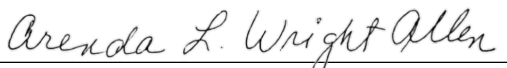
² In his objections, Petitioner argues in part that the Magistrate Judge's recommendation to stay Count Three in deference to Petitioner's separately pending civil rights case (E.D. Va. No. 2:22cv343) is no longer appropriate because Petitioner is no longer represented by counsel in his separate case. Objs. at 2–3, ECF No. 31. The Court notes that, although the Magistrate Judge did cite the presence of counsel as one factor in favor of the stay, the Court finds, upon *de novo* review, that a stay remains appropriate given the pendency of near-identical claims in Petitioner's separate civil rights case, notwithstanding the departure of counsel in that case. (The Court also notes that it appears from the docket of case number 2:22cv343 that Petitioner dismissed his counsel from that case and chose to proceed *pro se*.)

certificate of appealability from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Order to Petitioner and to counsel of record for the Respondent.

IT IS SO ORDERED.

Norfolk, Virginia
September 19, 2023



Arenda L. Wright Allen
United States District Judge